

MHST080007452016

REGULAR CIVIL SUIT NO.113/2016

Nanda Mahadeo Malusare and Ors.

V/s.

Sadashiv Kondiba Malusare and Ors.

ORDER BELOW EXH.23

The present application is filed by plaintiffs for relief of temporary injunction against defendants No 1 to 3 so as to restrain them from disturbing alleged peaceful possession of plaintiffs in the suit properties.

02. As per the submissions of plaintiffs, suit properties as mentioned in the plaint are ancestral properties of both parties. The plaintiffs claim possession over suit properties and filed main suit for partition and separation of their shares. Meanwhile, after filing of suit, defendants agreed for not disturbing plaintiffs' possession over suit properties and therefore, plaintiffs did not proceed with prior application of temporary injunction at Exh 5. Afterwards, on 21/12/2024, when the plaintiffs went in suit properties, the defendants obstruct them from entering into suit properties. Hence, plaintiffs are constrained to file present application.

03. The defendants No 1 to 3 filed their say to the present application at Exh 26 and contended that plaintiffs have no possession over suit properties. It is further stated by them that the plaintiffs averred about obstruction of entering into suit properties by

defendant No 2, but in fact the defendant No 2 was died before 2 years. As per their allegations, the plaintiffs' conduct is not bona fide and they are not come before this Court with clean hands. Therefore, they claimed that the plaintiffs are not entitled for relief of injunction and they prayed for rejection of present application.

04. I heard arguments of both parties and perused documents on record. Considering documents on record and rival submissions of both parties, following points are arose for my determination and my reasoned findings to them are as follows:-

Sr. No.	Points for determination	Findings
1	Whether plaintiff proves that there is prima facie case in his favour ?	No
2	Whether balance of convenience tilts in favour of plaintiff ?	No
3	Whether irreparable loss would cause to the plaintiff if the relief of temporary injunction is rejected in his favour?	No
4	What Order?	Application is rejected.

REASONS

05. The plaintiffs filed on record copy of letter sent to Shirwal Police Station regarding complaint against the defendants. The defendants No 1 to 3, on the other hand, filed on record 7/12 extract of Gat No 1261/1 and copy of Mutation Entry No 8932.

As To Point No.1 to 4:-

06. Provisions of Order XXXIX Rule 1 of the Code of Civil Procedure provide that temporary injunction may be granted, if in any suit it is proved by affidavit or otherwise (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or (b) that the defendant threatens, or is about to remove or dispose of his property with intent to defraud his creditors, or c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the Court may by order grant a temporary injunction to restrain such act until the disposal of the suit or until further orders.

07. It is now well settled that the party seeking temporary injunction has to satisfy the triple requirements of prima facie case, balance of convenience and irreparable loss. In case of ***Mandali Ranganna and Ors. V/s. T. Ramachandra and Ors., AIR 2008 SC 2291***, the Hon'ble Supreme Court held that *“while considering an application for grant of injunction, the Court will not only take into consideration the basic elements in relation thereto, i.e. existence of prima facie case, balance of convenience and irreparable injury, it must be also take into consideration the conduct of the parties. Grant of injunction is an equitable relief. Grant or refusal of injunction has serious consequences depending upon the nature thereof”*.

08. Prima facie case does not mean that the plaintiff should have a cent percent case which will in all probability succeed in trial. Prima facie case means that the contentions which the plaintiff is

raising, require consideration on merit and are not liable to be rejected summarily. In the backdrop of above discussion, facts of the present case are required to be analyzed thoroughly.

09. In the present case, main suit is filed by the plaintiffs for partition and other reliefs. The plaintiffs averred that suit properties as described in the plaint are ancestral properties of both parties and defendants are obstructing their peaceful possession. Now, fact of possession over suit properties is required to be proved after evidence on merit from both sides. The plaintiffs are seeking relief of injunction regarding not disturbing possession of them over suit property. However, the vary fact of possession is required to be established through sufficient evidence. Moreover, the suit is filed for partition where interests of both parties are involved in the subject matter of suit.

10. At this juncture, it appears that settled possession of plaintiffs over suit property is not established by them and in such case, the relief of injunction, which is equitable and discretionary remedy, cannot be granted without application of judicial mind. Moreover, the main suit is pending since year 2016 and issues were framed in the year 2019. The main suit is at the stage of evidence of plaintiffs. The possession over suit property is required to be decided after evidence to that effect from both parties at later stage of the suit. Therefore, relief of temporary injunction, in the present case, is not seem to be reasonable and appropriate. Accordingly, I answered point No.1 to 3 in negative and in answering point No.4, following order is passed:

ORDER

1. The application at Exh.23 is rejected.
2. No order as to costs.

Date: 17.11.2025.
Khandala.

(Smt. S. G. Kuvalekar)
Civil Judge Junior Division
Khandala